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In The

Supreme Court of the United States

McCREARY COUNTY, KENTUCKY; JIMMIE GREENE as McCreary County Judge Executive; PULASKI COUNTY, KENTUCKY; DARRELL BESHEARS as Pulaski County Judge Executive,
Petitioners,

v.

ACLU OF KENTUCKY, ET AL.
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF AMICUS CURIAE OF WALLBUILDERS, INC.

In support of the *Petitioner*

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INTEREST OF THE AMICUS CURIAE[1]

Amicus Curiae, WallBuilders, Inc., is a non-profit corporation dedicated to the restoration of America's moral and religious heritage. Possessing one of the largest privately held libraries in the nation with more than 70,000 documents predating 1812, it specializes in conducting research using primary source documents. This expertise in America's history and religious heritage causes this organization to take significant interest in the present case.

SUMMARY OF THE ARGUMENT

The Ten Commandments have both religious and historical significance. This brief will explain how each one of the Ten Commandments has historically impacted American law and jurisprudence and thus, why the Ten Commandments should be permitted to be displayed with other political and patriotic documents.

In this regard, this Brief will greatly expand upon the information contained in Petitioner's Brief.

[1] The parties have consented to the filing of this brief. A copy of the letter of consent from Respondent has been lodged with the Clerk of the Court. A copy of the letter of consent from Petitioner accompanies this brief. No counsel for any party has authored this brief in whole or in part. No person or entity has made any monetary contribution to the preparation or submission of this brief, other than the amicus curia, its members, and its counsel.

ARGUMENT

I. TWO AUTHORITATIVE VOICES ESTABLISH THAT THE TEN COMMANDMENTS HISTORICALLY IMPACTED AMERICAN LAW AND JURISPRUDENCE: COLONIAL, AND EARLY NATIONAL LAWS; AND CONTEMPORARY COURT DECISIONS.

The District Court focused on the religious element of the Ten Commandments, while ignoring the historical significance of the Ten Commandments, stating "[t]he reasonable observer will see one religious code placed alongside eight political or patriotic documents, and will understand that the counties promote that one religious code . . . ." *ACLU of Kentucky v. McCreary Co.*, 145 F. Supp. 2d 845, 851 (E.D. Ky. 2001). The Court of Appeals while "taking issue" with some of the lower court's reasoning, ultimately agreed that the "predominant purpose' was religious and therefore unconstitutional. *ACLU of Kentucky v. McCreary Co.*, 354 F.3d 438, 447 (6th Cir. 2003). However, there is nothing incompatible nor—more importantly—unconstitutional about a religious document having real, valid, and enormous historical significance, also.

This brief will concentrate on this one aspect of the opinion below, in order to explain why the historical significance of the Ten Commandments helps render their display constitutional. The brief will explain how each one of the Ten Commandments has historically

impacted American law and jurisprudence and thus, why the Ten Commandments should be permitted to be displayed with other political and patriotic documents.

Every one of the Ten Commandments was enacted into the laws of the colonies and molded the common law of the colonies.[2]

A. The first commandment, "Have No Other Gods," has impacted American law and jurisprudence.

The first commandment was historically incorporated into American law. For example, the first commandment was incorporated into the first written law code in America by the Virginia colony. A 1610 law from the Virginia colony declared the following:

> [S]ince we owe our highest and supreme duty, our greatest and all our allegiance to Him from whom all power and authority is derived, and flows as from the first and only fountain, and being especially soldiers

[2] For the purpose of this *amicus* brief, the commandments of the Ten Commandments as listed in the Bible Exodus 20:3-17 and Deuteronomy 5:7-21 (and in a shortened version in Exodus 34:14-28) will be summarized as:

1. Have no other gods.
2. Have no idols.
3. Honor God's name.
4. Honor the Sabbath day.
5. Honor your parents.
6. Do not murder.
7. Do not commit adultery.
8. Do not steal.
9. Do not perjure yourself.
10. Do not covet.

> impressed in this sacred cause, we must alone expect our success from Him who is only the blesser of all good attempts, the King of kings, the Commander of commanders, and Lord of hosts, I do strictly command and charge all Captains and Officers of what quality or nature soever, whether commanders in the field, or in town or towns, forts or fortresses, to have a care that the Almighty God be duly and daily served, and that they call upon their people to hear sermons, as that also they diligently frequent morning and evening prayer themselves by their own example and daily life and duties herein, encouraging others thereunto.

Articles, Laws, and Orders, Divine, Politic and Martial for the Colony of Virginia (1610-1611), *reprinted in Colonial Origins of the American Constitution: A Documentary History* 315-316 (David S. Lutz ed., 1998) [hereinafter *Colonial Origins*]. Additionally, the very first law in Massachusetts' legal code was based on the first commandment. "If any man after legal conviction shall have or worship any other god but the Lord God, he shall be put to death. Deut. 13.6, 10, Deut. 17.2, 6, Ex. 22.20." *Massachusetts Body Of Liberties* (1641), *reprinted in Colonial Origins, supra*, at 83. Connecticut also made the first commandment its first law. "If any man after legal conviction shall have or worship any other god but the Lord God, he shall be put to death (Duet. 13.6 and 17.2, Ex. 22.20)." *Capital Laws of Connecticut* (1642), *reprinted in Colonial Origins,*

supra, at 229. These are just a few of the examples that affirm the first commandment's role in the history of American law.

B. The second commandment, "Have no idols." has impacted American law and jurisprudence.

The second commandment also historically impacted American law. Just one example is New Hampshire's 1680 law prohibiting idolatry, which is typical of the colonies' idolatry laws. "It is enacted by ye Assembly and ye authority thereof, yet if any person having had the knowledge of the true God openly and manifestly have or worship any other god but the Lord God, he shall be put to death. Ex. 22.20, Deut. 13.6 and 10." *General Laws and Liberties of New Hampshire* (1680), *reprinted in Colonial Origins, supra*, at 6.

C. The third commandment, "Honor God's name," has impacted American law and jurisprudence.

The third commandment also historically shaped American law and jurisprudence. Laws enacted to observe the third commandment were organized into two categories: laws prohibiting blasphemy and laws prohibiting swearing and profanity. Noah Webster, an American legislator and judge, affirmed that both of these categories of law were derived from the third commandment:

> When in obedience to the third commandment of the Decalogue you would avoid profane swearing, you are to remember that this alone is not a full compliance with the prohibition which

> [also] comprehends all irreverent words or actions and whatever tends to cast contempt on the Supreme Being or on His word and ordinances [i.e., blasphemy].

Noah Webster, *Letters to a Young Gentleman* 8 (1823); *see also* Noah Webster, *A Collection of Papers* 296 (1843). Colonies enacted laws that embodied these two categories. For example, a 1610 Virginia law declared — "[t]hat no man speak impiously or maliciously against the holy and blessed Trinity or any of the three persons . . . upon pain of death. That no man blaspheme God's holy name upon the pain of death." *Articles, Laws, and Orders, Divine, Politic, and Martial for the Colony of Virginia* (1610-1611), *reprinted in Colonial Origins*, *supra*, at 316. Similarly, a 1639 Connecticut law declared that

> [i]f any person shall blaspheme the name of God the Father, Son, or Holy Ghost, with direct, express, presumptuous or high-handed blasphemy, or shall curse in the like manner, he shall be put to death. Lev. 24.15, 16.

The Code of 1650, at 28-29. Other colonies passed similar laws: Massachusetts in 1641, *Massachusetts Body Of Liberties* (1641), *reprinted in Select Charters and Other Documents Illustrative of American History, 1606-1775* 87 (William MacDonald ed., 1993) [hereinafter *Select Charters*]; *Connecticut in 1642, Capital Laws of Connecticut* (1642), *reprinted in Colonial Origins*, *supra*, at 230; New Hampshire in

1680, *General Laws and Liberties of New Hampshire* (1680), *reprinted in Colonial Origins*, *supra*, at 6; Pennsylvania in 1682, *An Act for Freedom of Conscience* (Pennsylvania, 1682), *reprinted in Colonial Origins*, at 289; Pennsylvania in 1700, *An Abridgment of the Laws of Pennsylvania* 32 (Collinson Read ed., 1801); Pennsylvania in 1741, *An Act to Prevent the Grievous Sins of Cursing and Swearing within this Province and Territories*, *reprinted in* 1 *Laws of the Commonwealth of Pennsylvania* 7 (1810); South Carolina in 1695, *Blasphemy-Profaneness* (1695), *reprinted in* 1 *Alphabetical Digest of the Public Statute of South Carolina* 87-88 (Joseph Brevard ed., 1814); and North Carolina in 1741, *Vice and Immorality* (1741), *reprinted in A Manual of The Laws of North Carolina, Arranged Under Distinct Heads, In Alphabetical Order* 264 (John Haywood ed., 1814).

Prominent Framers also enforced the third commandment. For example, Commander-in-Chief George Washington issued numerous military orders during the American Revolution that first prohibited swearing and then ordered an attendance at Divine worship, thus relating the prohibition against profanity to a religious duty. Typical of these orders is Washington's declaration on July 4, 1775.

> The General most earnestly requires and expects a due observance of those articles of war established for the government of the army which forbid profane cursing, swearing, and drunkenness; and in like manner requires and expects of all officers and soldiers not engaged on actual duty, a

> punctual attendance on Divine Service to implore the blessings of Heaven upon the means used for our safety and defense.

George Washington, *General Orders, Head-Quarters, Cambridge, July 4, 1775 in* 3 *The Writings of George Washington* 309 (John C. Fitzpatrick ed., 1931).

The third commandment also affected the history of American jurisprudence. Judge Zephaniah Swift, author of the first legal text published in America, explained why civil authorities enforced the third commandment's prohibition against blasphemy and profane swearing:

> Crimes of this description are not punishable by the civil arm merely because they are against religion. Bold and presumptuous must he be who would attempt to wrest the thunder of heaven from the hand of God and direct the bolts of vengeance where to fall. The Supreme Deity is capable of maintaining the dignity of His moral government and avenging the violations of His holy laws. His omniscient mind estimates every act by the standard of perfect truth and His impartial justice inflicts punishments that are accurately proportioned to the crimes. But short-sighted mortals cannot search the heart and punish according to the intent. They can only judge by overt acts and punish them as they respect the peace and happiness of civil society. This is the rule

> to estimate all crimes against civil law and is the standard of all human punishments. It is on this ground only that civil tribunals are authorized to punish offences against religion.

Zephaniah Swift, 2 *A System of the Laws of the State of Connecticut,* 320 (1796).

The laws against blasphemy and profanity based on the third commandment continued beyond the Founding Era. During the eighteenth and nineteenth century, several states passed laws based on the third commandment: Connecticut in 1784, An Act for the Punishment of Divers Capital and Other Felonies, 1 *The Public Statute Laws of the State of Connecticut* 295-96 (1808); New Hampshire in 1791, An Act for the Punishment of Profane Cursing and Swearing, *The Laws of the State of New Hampshire, the Constitution of the State of New Hampshire, and the Constitution of the United States, with its Proposed Amendments* 280-81 (1797) (passed February 6, 1791); *Id.* at 286-87 (a separate act passed February 10, 1791); *see also* An Act for the Punishment of Certain Crimes not Capital, *Constitution and Laws of the State of New-Hampshire; Together with the Constitution of the United States* 277 (1805) (passed February 16, 1791); Vermont in 1791, An Act for the Punishment of Drunkenness, Gaming, and Profane Swearing, *Statutes of the State of Vermont* 51 (1791) (passed February 28, 1787); An Act for the Punishment of Divers Capital and other Felonies, *Id.* at 75 (passed March 8, 1787); Virginia in 1792, *A Digest of the Laws of Virginia, which are of a Permanent Character and General Operation* 453-54 (Joseph Tate

ed., 1823); *see also* An Act for the Effectual Suppression of Vice, and Punishing the Disturbers of Religious Worship and Sabbath Breakers, 1 *The Revised Code of the Laws of Virginia: Being A Collection of all such Acts of the General Assembly, of a Public and Permanent Nature as are now in Force*, 554-56 (1819); Pennsylvania in 1794, Act of April 22, 1794, *An Abridgment of the Laws of Pennsylvania* 380 (1801); Maine in 1821, Jeremiah Perley, *The Maine Justice: Containing the Laws Relative to the Powers and Duties of Justices of the Peace* 7, 236 (1823), *see also* An Act Against Blasphemy and Profane Cursing and Swearing, *Laws of the State of Maine* 66-67 (1822) (passed February 24, 1821); Tennessee in 1834, Breaking the Sabbath, *reprinted in* James Coffield Mitchell, *The Tennessee Justice's Manual and Civil Officer's Guide* 428 (1834); Massachusetts in 1835, Title VII: Of Towns and Town Officers, Section 76, *The Revised Statutes of the Commonwealth of Massachusetts,* 185 (1836) (passed November 4, 1835); and New York in 1836, "Of Profane Cursing and Swearing," Rev. Stat. 673, Art 6, *reprinted in* George C. Edwards, *Treatise of the Powers and Duties of the Justices of the Peace and the Town Officers in the State of New York* 379-80 (1836).

In 1824, the Supreme Court of Pennsylvania reaffirmed that the laws against blasphemy were derived from divine law. "The true principles of natural religion are part of the common law; the essential principles of revealed religion are part of the common law; so that a person vilifying, subverting or ridiculing them may be prosecuted at common law." *Updegraph v. Commonwealth,* 11 Serg. & Rawle 393, 401 (Pa. 1824). The court then noted that Pennsylvania's laws against

blasphemy had been drafted by James Wilson, a signer of the Constitution and original Justice of this Court:

> The late Judge Wilson, of the Supreme Court of the United States, Professor of Law in the College in Philadelphia, was appointed in 1791, unanimously by the House of Representatives of this State to "revise and digest the laws of this commonwealth. . . . " He had just risen from his seat in the Convention which formed the Constitution of the United States, and of this State; and it is well known that for our present form of government we are greatly indebted to his exertions and influence. With his fresh recollection of both constitutions, in his course of Lectures (3d vol. of his works, 112), he states that profaneness and blasphemy are offences punishable by fine and imprisonment, and that Christianity is part of the common law. It is vain to object that the law is obsolete; this is not so; it has seldom been called into operation because this, like some other offences, has been rare. It has been retained in our recollection of laws now in force, made by the direction of the legislature, and it has not been a dead letter.

Id. at 403. This Court in *Church of Holy Trinity v. United States*, 143 U.S. 457, 470-71 (1892) subsequently invoked the authority of and endorsed this

Supreme Court of Pennsylvania decision. The third commandment's influence on profanity and blasphemy laws was reaffirmed by subsequent courts, such as the 1921 Supreme Court of Maine in *State* v. *Mockus*, 14 ALR 871, 874 (Maine Sup. Jud. Ct., 1921) and the 1944 Florida Supreme Court in *Cason* v. *Baskin*, 20 So. 2d 243, 247 (Fla. 1944) (*en banc*).

D. The fourth commandment, "Honor the Sabbath," has impacted American law and jurisprudence.

The fourth commandment historically impacted American law and jurisprudence. While a representative sampling will be presented below, there are three points that clearly establish the effect of the fourth commandment on American law.

First is the inclusion in the U.S. Constitution of the recognition of the Sabbath in Art. I, Sec. 7, ¶ 2, stipulating that the President has ten days to sign a law, "Sundays excepted." The "Sundays excepted" clause had previously appeared in the individual State constitutions of that day, and therefore, when incorporated into the U. S. Constitution, carried the same meaning that had been established by traditional usage in the States. That meaning was then imparted into the constitutions of the various States admitted into the Union subsequent to the adoption of the federal Constitution. The historical understanding of this clause was summarized in 1912 by the Supreme Court of Missouri which, expounding on the meaning of this provision in its own State constitution and in the United States Constitution, declared:

It is provided that if the Governor does not return a bill within 10 days (Sundays excepted), it shall become a law without his signature. Although it may be said that this provision leaves it optional with the Governor whether he will consider bills or not on Sunday, yet, regard being had to the circumstances under which it was inserted, can any impartial mind deny that it contains a recognition of the Lord's Day as a day exempted by law from all worldly pursuits? The framers of the Constitution, then, recognized Sunday as a day to be observed, acting themselves under a law which exacted a compulsive observance of it. If a compulsive observance of the Lord's Day as a day of rest had been deemed inconsistent with the principles contained in the Constitution, can anything be clearer than, as the matter was so plainly and palpably before the Convention, a specific condemnation of the Sunday law would have been engrafted upon it? So far from it, Sunday was recognized as a day of rest.

State v. Chicago, 143 S.W. 785, 803 (Mo. 1912).

The second point concerning the impact of the fourth commandment on American law is seen in states recognizing the Sabbath as evidenced in their civil process law. For example, a 1830 New York law declared that "Civil process cannot, by statute, be executed on Sunday, and a service of such process on

Sunday is utterly void and subjects the officer to damages." *General Rules Applicable to a Summons, Warrant of Attachment*, Rev. Stat. 675, *reprinted in* Edwards, *Justices of the Peace . . . in the State of New York,* at 38. Similar laws may be found in Pennsylvania in 1862, *Charter of Liberties and Frame of Government of the Province of Pennsylvania in America* (1682), *reprinted in Colonial Origins, supra*, at 281; Pennsylvania in 1705, An Act to Restrain People from Labor on the First Day of the Week, 1 *Laws of the Commonwealth of Pennsylvania* 25 (1810) (passed October 14, 1705); Vermont in 1787, An Act for the Due Observation of the Sabbath, *Statutes of the State of Vermont* 157 (1791) (passed March 9, 1787); Connecticut in 1796, *Of Crimes Against Religion*, *reprinted in* Swift, 2 *A System of the Laws* 326 (1796); and New Jersey in 1798, An Act for Suppressing Vice and Immorality, *Laws of the State of New Jersey, Revised and Published Under the Authority of the Legislature* 329-330 (William Paterson ed., 1800) (passed March 16, 1798).

The third point concerning the impact of the fourth commandment on American law and jurisprudence is found in the United States Supreme Court's declaration that Sabbath laws remain constitutional today. *McGowan* v. *Maryland*, 366 U.S. 420 (1961). Similarly, during the twentieth century several state courts have acknowledged that the Sabbath laws were derived from the fourth commandment. For example, the Supreme Court of Pennsylvania in 1967 did a thorough exegesis of Sabbath laws and concluded:

> Remember the Sabbath day to keep it holy; six days shalt thou labor and do all thy work; but the seventh day ~~is the~~ Sabbath of the Lord thy God. In it thou shalt not do any work." This divine pronouncement became part of the Common Law inherited by the thirteen American colonies and by the sovereign States of the American union.

Bertera's Hopewell Foodland, Inc. v. *Masters,* 236 A.2d 197, 200-01 (Pa. 1967). Other state courts have made similar declarations: Florida in *Gillooley* v. *Vaughn,* 110 So. 653, 655 (Fla. 1926); Georgia in *Rogers* v. *State,* 4 S.E.2d 918, 919 (Ga. Ct. App. 1939); Minnesota in *Brimhall* v. *Van Campen,* 8 Minn. 1 (1858); Mississippi in *Paramount-Richards Theatres* v. *City of Hattiesburg,* 49 So. 2d 574, 577 (Miss. 1950); and New York in *People* v. *Rubenstein,* 182 N.Y.S.2d 548, 550 (N.Y. Ct. Sp. Sess. 1959).

The fourth commandment was also enacted into law. Examples of the early implementation of the fourth commandment into law are seen in the Virginia laws of 1610, *Articles, Laws, and Orders, Divine, Politic and Martial for the Colony of Virginia, reprinted in Colonial Origins,* at 316-17; the New Haven laws of 1653, Charles J. Hoadly, *Records of the Colony or Jurisdiction of New Haven, From May, 1653, to the Union, Together With the New Haven Code of 1656,* at 605 (1858); the New Hampshire laws of 1680, *General Laws and Liberties of New Hampshire, reprinted in Colonial Origins,* at 10-11; the Pennsylvania laws of 1682, *An Act for Freedom of Conscience, reprinted in Colonial*

Origins, at 288; and the Pennsylvania laws of 1705, *An Act to Restrain People from Labor on the First Day of the Week,* 1 *Laws of the Commonwealth of Pennsylvania,* 25-26 (1810) (passed October 4, 1705), *see also Abridgement of the Laws of Pennsylvania* 362 (1801); the South Carolina laws of 1712, Title 160: Sunday, 2 *Alphabetical Digest of the Public Statute Law of South Carolina* 272-75 (1814); the North Carolina laws of 1741, Vice and Immorality, *A Manual of The Laws of North Carolina* 264 (1814); the Connecticut laws of 1751, An Act for the Due Observation of the Sabbath, or Lord's Day, 1 *The Public Statute Laws of the State of Connecticut* 577-78 (1808), *see also* Swift, 2 *A System of the Laws* (1796) 325-26. During the Federal Era and well beyond, states continued to enact and reenact Sabbath laws. In fact, the States went to impressive lengths to uphold the Sabbath. For example, in 1787, Vermont enacted a ten-part law to preserve the Sabbath, An Act for the Due Observation of the Sabbath, *Statutes of the State of Vermont* 155-57 (1791) (passed March 9, 1787). In 1791, Massachusetts enacted an eleven-part law, Of the Observance of the Lord's Day and the Prevention and Punishment of Immorality, *The Revised Statutes of the Commonwealth of Massachusetts* 385-86 (1836) (passed November 4, 1835). In 1792, Virginia enacted an extensive eight-part law, An Act for the Effectual Suppression of Vice, and Punishing the Disturbers of Religious Worship, and Sabbath Breakers, 1 *The Revised Code of the Laws of Virginia* 554-56 (1819) (passed December 26, 1792), *see also A Digest of the Laws of Virginia* 453-54 (1823). In 1798, New Jersey enacted a twenty-one-part law, An Act for Suppressing Vice and Immorality, *Laws of the*

State of New Jersey 329-33 (1800) (passed March 16, 1798). In 1799, New Hampshire enacted a fourteen-part law, An Act for the Better Observation of the Lord's Day, and for Repealing All the Laws Heretofore Made for that Purpose, *reprinted in Constitution and Laws of the State of New Hampshire* 290-93 (1805) (passed December 24, 1799). In 1821, Maine enacted a thirteen-part law, An Act Providing for the Due Observation of the Lord's Day, *reprinted in Laws of the State of Maine* 67-71 (1822) (passed December 24, 1799).

These and numerous other examples prove that the fourth commandment historically shaped American law and jurisprudence.

E. The fifth commandment, "Honor your parents," has impacted American law and jurisprudence.

The fifth commandment historically affected American law and jurisprudence. Many early state codes cited both the fifth commandment and additional Bible verses as the basis for their laws related to honoring parents. For example, a 1642 Connecticut law declared that

> If any child or children above sixteen years old, and of sufficient understanding shall curse or smite their normal father or mother, he or they shall be put to death; unless it can be sufficiently testified that the parents have been very unchristianly negligent in the education of such children, or so provoke them by extreme and cruel correction that they have been forced

> thereunto to preserve themselves from death [or] maiming. Ex. 21:17, Lev. 20, Ex. 20:15.

The Code of 1650, at 29; *see also Capital Laws of Connecticut, reprinted in Colonial Origins, supra,* at 230.

Even three centuries after these early legal codes, state courts were still citing the fifth commandment as the basis for the public policy between parents and children. For example, in 1934, a Louisiana appeals court stated: "'Honor thy father and thy mother,' is as much a command of the municipal law as it is a part of the Decalogue, regarded as holy by every Christian people. 'A child,' says the code, 'whatever be his age, owes honor and respect to his father and mother.'" *Ruiz* v. *Clancy,* 157 So. 737, 738 (La. Ct. App. 1934) (citing *Caldwell* v. *Henmen,* 5 Rob. 20 (La. 1843). These and numerous other examples demonstrate that the fifth commandment historically impacted American law and jurisprudence.

F. The sixth commandment, "Do not murder," has impacted American law and jurisprudence.

The sixth commandment exerted substantial force on American law and jurisprudence. The sixth commandment influenced American criminal laws. For example, a 1641 Massachusetts law declared:

> 4. 21.12, Numb. 35.13, 14, 30, 31. If any person commit any willful murder, which is manslaughter committed upon premeditated malice, hatred, or cruelty,

> not in a man's necessary and just defense nor by mere casualty against his will, he shall be put to death.
>
> 5. b. 25.20, 21. Lev. 24.17. If any person slayeth another suddenly in his anger or cruelty of passion, he shall be put to death.
>
> 6. Ex. 21.14. If any person shall slay another through guile, either by poisoning or other such devilish practice, he shall be put to death.

Massachusetts Body Of Liberties (1641), *reprinted in Select Charters, supra*, at 87-88.

Courts have also traced murder laws to the sixth commandment. For example, in 1932 a Kentucky appeals court declared:

> The rights of society as well as those of appellant are involved and are also to be protected, and to that end all forms of governments following the promulgation of Moses at Mt. Sinai has required of each and every one of its citizens that "Thou shalt not murder." If that law is violated, the one guilty of it has no right to demand more than a fair trial, and if, as a result thereof, the severest punishment for the crime is visited upon him, he has no one to blame but himself.

Young v. *Commonwealth,* 53 S.W. 963, 966 (Ky. Ct. App. 1932).

Other courts have recognized the sixth commandment as the historical root in murder laws. *See, e.g., Matter of Storar*, 434 N.Y.S.2d 46, 48 (N.Y. App. Div. 1980) (Caardamone, J., dissenting); *Ex parte Mei,* 192 A. 80, 82 (N.J. 1937). These and numerous other examples prove that the sixth commandment impacted American law and jurisprudence.

G. The seventh commandment, "Do not commit adultery," has impacted American law and jurisprudence.

The seventh commandment also historically influenced American law and jurisprudence. Several colonies and states cited the seventh commandment for their adultery laws. For example, a 1641 Massachusetts law stated that "If any person committeth adultery with a married or espoused wife, the adulterer and adulteresses shall surely be put to death. Ex. 20.14." *Massachusetts Body Of Liberties*, *reprinted in Colonial Origins, supra,* at 84. Nearly half-a-century later, Vermont enacted an adultery law based on divine law.

> Whereas the violation of the marriage covenant is contrary to the command of God and destructive to the peace of families: be it therefore enacted by the general assembly of the State of Vermont that if any man be found in bed with another man's wife, or woman with another's husband, . . . &c.

An Act Against Adultery, Polygamy, and Fornication, *Statutes of the State of Vermont* 16-17 (1791) (passed March 8, 1787).

Centuries later, courts were still using the seventh commandment as the basis for enforcing their State statutes on adultery. For example, in 1898, the highest criminal court in Texas proclaimed that the Texas state law on adultery was derived from the seventh commandment: "The accused would insist upon the defense that the female consented. The state would reply that she could not consent. Why? Because the law prohibits, with a penalty, the completed act. 'Thou shalt not commit adultery' is our law as well as the law of the Bible." *Hardin* v. *State*, 46 S.W. 803, 808 (Tex. Crim. App. 1898). In 1955, the Washington Supreme Court also declared that the seventh commandment was the basis for its adultery laws. "Adultery, whether promiscuous or not, violates one of the Ten Commandments and the statutes of this State." *Schreifels* v. *Schreifels,* 287 P.2d 1001, 1005 (Wash. 1955). Other courts have made similar declarations. *See Barbour* v. *Barbour,* 330 P.2d 1093, 1098 (Mont. 1958); *S.B.* v. *S.J.B.*, 609 A.2d 124, 125 (N.J. Super. Ct. Ch. Div. 1992); *Petition of Smith,* 71 F. Supp. 968, 972 (D.N.J. 1947). These examples plus many others indicate that the seventh commandment played an important role in American law and jurisprudence.

H. <u>The eighth commandment, "Do not steal," has impacted American law and jurisprudence.</u>

The eighth commandment also historically affected American law and jurisprudence. Chancellor James Kent, a "Father of American Jurisprudence," in

his classic 1826 *Commentaries on American Law* confirmed that laws prohibiting theft were found in divine law. "To overturn justice by plundering others tended to destroy civil society, to violate the law of nature, and the institutions of Heaven." James Kent, 1 *Commentaries on American Law*, 7 (1826). Subsequently, other legal authorities reaffirmed the divine origin behind the prohibition of theft. For example, in 1951, the Louisiana Supreme Court declared, "In the Ten Commandments, the basic law of all Christian countries, is found the admonition "Thou shalt not steal.'" *Succession of Onorato*, 51 So. 2d 804, 810 (La. 1951). In 1940, the Supreme Court of California made a similar declaration:

> Defendant did not acknowledge the dominance of a fundamental precept of honesty and fair dealing enjoined by the Decalogue and supported by prevailing moral concepts. "Thou shalt not steal" applies with equal force and propriety to the industrialist of a complex civilization as to the simple herdsman of ancient Israel.

Hollywood Motion Picture Equipment Co. v. Furer, 105 P.2d 299, 301 (Cal. 1940).

Significantly, other courts have acknowledged the same. *See De Rinzie* v. *People,* 138 P. 1009, 1010 (Colo. 1913); *Anderson* v. *Maddox*, 65 So. 2d 299, 301-02 (Fla. 1953); *Addison* v. *State,* 116 So. 629 (Fla. 1928); *State* v. *Gould,* 46 S.W.2d 886, 889-90 (Mo. 1932); *State* v. *Donaldson*, 99 P. 447, 449 (Utah 1909).

These and numerous other examples demonstrate that the eighth commandment historically impacted American law and jurisprudence.

I. <u>The ninth commandment, "Do not perjure yourself," has impacted American law and jurisprudence.</u>

The ninth commandment also historically influenced American law and jurisprudence. For example, a 1642 Connecticut law against perjury recognized its origin in divine law. "If any man rise up by false witness, wittingly and of purpose, to take away any man's life, he shall be put to death. Deut. 19:16, 18, 19." *The Code of 1650,* at 28-29*; see also Capital Laws of Connecticut, reprinted in Colonial Origins,* at 230. Similar laws were found in other colonies: Massachusetts in 1641, *Massachusetts Body Of Liberties, reprinted in Colonial Origins,* at 84, Rhode Island in 1647, *Acts and Orders of 1647, reprinted in Colonial Origins,* at 190-91; New Hampshire in 1680, *General Laws and Liberties of New Hampshire, reprinted in Colonial Origins,* at 7; and Connecticut in 1808, An Act for the Punishment of Divers Capital and Other Felonies, *The Public Statute Laws of the State of Connecticut* 295 (1808).

Courts have also openly recognized their indebtedness to the ninth commandment for perjury laws. For example, in 1924, the Oregon Supreme Court declared that "No official is above the law. 'Thou shalt not bear false witness' is a command of the Decalogue, and that forbidden act is denounced by statute as a felony." *Watts* v. *Gerking,* 228 P. 135, 141 (Or. 1924). In 1988, the Supreme Court of Mississippi cited to the

ninth commandment in instructing a prosecutor to not make accusations without evidence to support them.

> When the State or any party states or suggests the existence of certain damaging facts and offers no proof whatever to substantiate the allegations, a golden opportunity is afforded the opposing counsel in closing argument to appeal to the Ninth Commandment. "Thou shalt not bear false witness . . . ." Exodus 20:16.

Hosford v. *State,* 525 So. 2d 789, 799 (Miss. 1988).

Other courts have cited the ninth commandment as the source for laws against perjury. *See People* v. *Rosen*, 20 Cal. App. 2d 445, 448-449, (1937); *Pullum* v. *Johnson,* 647 So. 2d 254, 256 (Fla. Dist. Ct. App. 1994); *L.* v. *N.,* 326 S.W.2d 751, 755-756 (Mo. Ct. App. 1959). These and numerous other examples confirm that the ninth commandment played a role in American law and jurisprudence.

J. <u>The tenth commandment, "Do not covet," has impacted American law and jurisprudence</u>.

The tenth commandment also helped form American law and jurisprudence. Many courts have recognized that the tenth commandment forms the basis for several of their laws. For example, in 1895, the California Supreme Court cited this prohibition as the basis of laws against defamation. *Weinstock, Lubin & Co.* v. *Marks,* 42 P. 142, 145 (Cal. 1895). In 1904, the Court of Appeals in West Virginia cited it as the basis of laws preventing election fraud. *Doll v. Bender,* 47 S.E.

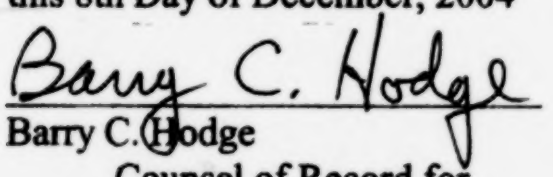
293, 300-01 (W.Va. 1904) (Dent, J. concurring). In 1958, a Florida appeals court cited it as the basis of laws targeting white-collar crime. *Chisman* v. *Moylan*, 105 So. 2d 186, 189 (Fla. Dist. Ct. App. 1958). And in 1951, the Oregon Supreme Court cited the tenth commandment prohibition as the basis of laws against modern forms of cattle rustling. *Swift & Co.* v. *Peterson*, 233 P.2d 216, 231 (Or. 1951). These and numerous other examples confirm that the tenth commandment affected American civil and jurisprudence.

CONCLUSION

Historical evidence, drawn from law codes, judicial decisions, and declarations of great American lawgivers, affirms and reaffirms that the entire Ten Commandments has made a seminal contribution to the early common law and still continues today to make a significant contribution to the modern common law. Aside from the Declaration of Independence, the Constitution, and the Bill of Rights, it is difficult to argue that there is any single work that has had a greater or more far-reaching impact on four centuries of American life, law, and culture than the Ten Commandments. For this reason alone, the Ten Commandments merits display.

For the foregoing reasons, the National Legal Foundation respectfully requests that this Court reverse the Sixth Circuit's decision.

Respectfully submitted
this 8th Day of December, 2004



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